Supreme Court, U.S.
FILED
FEB 4 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1102

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

MANUFACTURERS ASSOCIATION OF TRI-COUNTY, *et al.*,
Petitioners,

v.

JAMES W. KNEPPER, *et al.*,
Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

---

BRIEF OF *AMICI CURIAE* CHEMICAL MANUFACTURERS ASSOCIATION NATIONAL PAINT AND COATINGS ASSOCIATION SOCIETY OF THE PLASTICS INDUSTRY, INC. NATIONAL ASSOCIATION OF MANUFACTURERS NATIONAL ASSOCIATION OF PRINTING INK MANUFACTURERS CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION SOCIETY OF AMERICAN WOOD PRESERVERS, INC. IN SUPPORT OF PETITIONERS

Of Counsel
DAVID F. ZOLL
STEPHANIE SIEGEL
CHEMICAL MANUFACTURERS ASSOCIATION
2501 M Street, N.W.
Washington, D.C. 20037
(202) 887-1100

DANIEL MARCUS
Counsel of Record
CARL WILLNER
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037-1420
(202) 663-6000
Counsel for Amicus Curiae Chemical Manufacturers Association

[Additional counsel listed on inside cover]

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

JEROME H. HECKMAN
JOHN S. ELDRED
PETER A. SUSSER
KELLER & HECKMAN
1150 17th Street, N.W.
Suite 1000
Washington, D.C. 20036
(202) 956-5600

Counsel for Amicus Curiae Society of the Plastics Industry, Inc.

STEPHEN F. OWEN, JR.
LOOMIS, OWEN, FELLMAN & HOWE
2020 K Street, N.W.
Washington, D.C. 20006
(202) 296-5680

Counsel for Amicus Curiae National Association of Printing Ink Manufacturers

STEPHEN S. KELLNER
GEORGE G. MISKO
CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION
1001 Connecticut Ave, N.W.
Suite 1120
Washington, D.C. 20036
(202) 872-8110

Counsel for Amicus Curiae Chemical Specialties Manufacturers Association

BRUCE H. HAMILL
JAMES ANDREW DOYLE
Office of the General Counsel
NATIONAL PAINT AND COATINGS ASSOCIATION
1500 Rhode Island Ave., N.W.
Washington, D.C. 20005
(202) 462-6272

TIMOTHY J. WATERS
JEANE A. CARPENTER
MCDERMOTT, WILL & EMERY
1850 K Street, N.W.
Washington, D.C. 20006
(202) 778-8000

Counsel for Amicus Curiae National Paint and Coatings Association

JAN S. AMUNDSON
General Counsel
QUENTIN RIEGEL
Assistant General Counsel
NATIONAL ASSOCIATION OF MANUFACTURERS
1331 Pennsylvania Ave., N.W.
Suite 1500-North Lobby
Washington, D.C. 20004
(202) 637-3000

Counsel for Amicus Curiae National Association of Manufacturers

ARTHUR L. HEROLD
WEBSTER, CHAMBERLAIN & BEAN
1747 Pennsylvania Ave., N.W.
Suite 1000
Washington, D.C. 20006
(202) 785-9500

Counsel for Amicus Curiae Society of American Wood Preservers, Inc.

February 4, 1987

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
INTEREST OF AMICI CURIAE	2
REASONS FOR GRANTING THE WRIT	4
THE COURT OF APPEALS HAS UNDERMINED THE CAREFULLY BALANCED PREEMPTION SCHEME OF THE OSH ACT, AND DESTROYED THE UNIFORMITY OF HAZARD COMMUNICATION REGULATION, BY ENCOURAGING DUPLICATIVE AND BURDENSOME STATE "RIGHT-TO-KNOW" LEGISLATION	4
A. The Court of Appeals' Decision Conflicts With the OSH Act and the OSHA Hazard Communication Standard	5
1. Congress established a preemption scheme in the OSH Act designed to accommodate legitimate state regulatory interests while giving OSHA responsibility for preventing burdens on interstate commerce	5
2. The court of appeals' "any other purpose" test subverts the OSH Act scheme by making it unnecessary for states to seek OSHA state plan approval in order to avert preemption of their own "right-to-know" legislation	9
B. The Growing Number of State "Right-to-Know" Laws for Which OSHA Approval Has Not Been Obtained Demonstrates the Importance of This Issue	13
C. The Plain Language of the OSH Act and Decisions of This Court Demand a Broad Preemption Test to Counter the Proliferation of State Hazard Communication Regulation	17
CONCLUSION	19

TABLE OF AUTHORITIES

CASES	Page
Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504 (1981)	17
Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571 (1981)	19
Blum v. Bacon, 457 U.S. 132 (1982)	9
Capital Cities Cable, Inc. v. Crisp, 467 U.S. 691 (1984)	10
Chevron U.S.A., Inc. v. NRDC, 467 U.S. 837 (1984)	9
Chrysler Corp. v. Brown, 441 U.S. 281 (1979)	8
Commissioner v. Engle, 464 U.S. 206 (1984)	9
Fidelity Federal Savings & Loan Association v. De La Cuesta, 458 U.S. 141 (1982)	8, 9, 10
Hillsborough County, Florida v. Automated Medical Laboratories, Inc., 471 U.S. 707, 105 S.Ct. 2371 (1985)	8, 10
Jones v. Rath Packing Co., 430 U.S. 519 (1977)	9
Louisiana Public Service Commission v. FCC, 106 S.Ct. 1890 (1986)	9
Manufacturers Association of Tri-County v. Knepper, 801 F.2d 130 (3d Cir. 1986)	12
Manufacturers Association of Tri-County v. Knepper, 623 F. Supp. 1066 (M.D. Pa. 1985), *aff'd in part and rev'd in part*, 801 F.2d 130 (3d Cir. 1986)	12, 17
Missouri Pacific Railroad Co. v. Stroud, 267 U.S. 404 (1925)	19
New Jersey Chamber of Commerce v. Hughey, 774 F.2d 587 (3d Cir. 1985)	16
NLRB v. Lion Oil Co., 352 U.S. 282 (1957)	9
Ohio Manufacturers Association v. City of Akron, 801 F.2d 824 (6th Cir. 1986)	10
Pacific Gas and Electric Co. v. State Energy Resources Conservation and Development Commission, 461 U.S. 190 (1983)	18
Perez v. Campbell, 402 U.S. 637 (1971)	18
Retail Clerks International Association v. Schermerhorn, 375 U.S. 96 (1963)	9

TABLE OF AUTHORITIES—Continued

	Page
Shaw v. Delta Air Lines, Inc., 463 U.S. 85 (1983)	17
Silkwood v. Kerr-McGee, 464 U.S. 238 (1984)	18
United Steelworkers of America, AFL-CIO-CLC v. Auchter, 763 F.2d 728 (3d Cir. 1985)	3, 5
FEDERAL STATUTES	
Occupational Safety and Health Act of 1970, 29 U.S. §§ 651 *et seq.* (1982)	3
29 U.S.C. § 655(a) (1982)	5
29 U.S.C. § 667 (1982)	6
29 U.S.C. § 667(a) (1982)	6
29 U.S.C. § 667(b) (1982)	6
29 U.S.C. § 667(c) (1982)	6
29 U.S.C. § 667(c)(2) (1982)	6
29 U.S.C. § 667(c)(4) (1982)	6
29 U.S.C. § 667(c)(5) (1982)	6
29 U.S.C. § 667(c)(7) (1982)	6
29 U.S.C. § 667(c)(8) (1982)	6
29 U.S.C. § 667(e) (1982)	7
29 U.S.C. § 667(f) (1982)	7
Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 *et seq.* (1982)	17
29 U.S.C. § 1144(a) (1982)	17
FEDERAL REGULATIONS	
29 C.F.R. § 1902.1(a) (1986)	5
29 C.F.R. § 1910.4(a) (1986)	5
29 C.F.R. § 1910.1200 (1986)	3
29 C.F.R. § 1910.1200(a)(2) (1986)	8
29 C.F.R. § 1910.1200(d)(3) (1986)	11
29 C.F.R. § 1910.1200(d)(4) (1986)	11
29 C.F.R. Part 1952 (1986)	14, 15
29 C.F.R. Part 1956, subpart E (1986)	14
29 C.F.R. Part 1956, subpart F (1986)	14
STATE STATUTES	
N.J. Stat. Ann. §§ 34:5A-1 *et seq.* (West 1986)	17
Pa. Stat. Ann. tit. 35, §§ 7301 *et seq.* (Purdon Supp. 1986)	4

TABLE OF AUTHORITIES—Continued

	Page
Pa. Stat. Ann. tit. 35, § 7303(a) (Purdon Supp. 1986)	11
Pa. Stat. Ann. tit. 35, § 7303(d) (Purdon Supp. 1986)	11
Pa. Stat. Ann. tit. 35, § 7303(e) (Purdon Supp. 1986)	11
Pa. Stat. Ann. tit. 35, § 7303(f) (Purdon Supp. 1986)	11
Pa. Stat. Ann. tit. 35, § 7303(g) (Purdon Supp. 1986)	11
Pa. Stat. Ann. tit. 35, § 7304(c)(2) (Purdon Supp. 1986)	11
Pa. Stat. Ann. tit. 35, § 7306(a)(4) (Purdon Supp. 1986)	11
LEGISLATIVE MATERIALS	
116 Congressional Record 37,622 (1970)	7
116 Congressional Record 38,703 (1970)	7
48 Federal Register 53,283 (1983)	8
48 Federal Register 53,284 (1983)	8, 14
48 Federal Register 53,324 (1983)	8
48 Federal Register 53,334 (1983)	9
50 Federal Register 48,794 (1985)	5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

No. 86-1102

MANUFACTURERS ASSOCIATION OF TRI-COUNTY, *et al.*,
Petitioners,

v.

JAMES W. KNEPPER, *et al.*,
Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

---

BRIEF OF *AMICI CURIAE* CHEMICAL MANUFACTURERS ASSOCIATION NATIONAL PAINT AND COATINGS ASSOCIATION SOCIETY OF THE PLASTICS INDUSTRY, INC. NATIONAL ASSOCIATION OF MANUFACTURERS NATIONAL ASSOCIATION OF PRINTING INK MANUFACTURERS CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION SOCIETY OF AMERICAN WOOD PRESERVERS, INC. IN SUPPORT OF PETITIONERS

Chemical Manufacturers Association ("CMA"), National Paint and Coatings Association ("NPCA"), Society of the Plastics Industry, Inc., National Association of Manufacturers of the United States of America ("NAM"), National Association of Printing Ink Manufacturers ("NAPIM"), Chemical Specialties Manufacturers Association ("CSMA") and Society of American Wood Preservers, Inc. submit this brief as *amici curiae* in support of the petition for Writ of Certiorari by Manufacturers Association of Tri-County, *et al.*, seeking re-

view of the judgment and opinion of the United States Court of Appeals for the Third Circuit entered September 12, 1986. All parties to the case below have consented to the filing of this brief.

INTEREST OF *AMICI CURIAE*

Amici are trade associations [1] whose members are subject to the requirements of the federal Hazard Commu-

---

[1] Chemical Manufacturers Association is a nonprofit trade association whose 171 member companies represent more than 90% of the productive capacity of basic industrial chemicals within the United States.

National Paint and Coatings Association is a nonprofit trade association representing approximately 800 members who are engaged in the manufacture and distribution of about 90% of the total national volume of paint, varnish, lacquer, and allied products. 60% of NPCA member plants are small facilities with less than 20 employees.

The Society of the Plastics Industry, Inc. is a nonprofit trade association composed of approximately 1800 member companies and individuals who supply raw materials, process or manufacture plastics or plastic products or related equipment and machinery, and who are responsible for an estimated 75% of the total dollar volume of sales of plastics in this country.

National Association of Manufacturers of the United States of America is a nonprofit voluntary business association which represents approximately 13,000 companies nationwide. The membership of the NAM represents an estimated 80% of all goods manufactured in the United States and its members employ approximately 85% of all workers in the manufacturing sector.

The National Association of Printing Ink Manufacturers is a nonprofit trade association representing 126 companies which manufacture and market printing ink or printing ink raw materials and account for approximately 90% of the total shipments of printing ink in the United States.

The Chemical Specialties Manufacturers Association consists of over 400 companies engaged in the manufacture, distribution and marketing of formulated chemical specialty products to consumers as well as industrial and institutional markets.

The Society of American Wood Preservers, Inc. represents approximately 105 companies in the waterborne wood preserving industry, treating plants and chemical suppliers.

nication Standard[2] promulgated by the Occupational Safety and Health Administration, pursuant to the Occupational Safety and Health Act of 1970.[3]

CMA, NPCA, NAM, NAPIM, and CSMA participated actively in the agency proceedings which led to the adoption of the Hazard Communication Standard. CMA and NPCA also were intervenors in an earlier case before the Third Circuit Court of Appeals in which the validity of this standard and its preemptive effect on state regulation were established. *United Steelworkers of America, AFL-CIO-CLC v. Auchter*, 763 F.2d 728 (3d Cir. 1985).[4]

Amici have a substantial interest in the outcome of this litigation because the decision below, if allowed to stand, would be regarded as a leading precedent in determining the validity of state and local "right-to-know" legislation. As discussed below, numerous laws of this kind are now in force, imposing a wide variety of substance disclosure requirements. Many of the member companies of *amici* are nationwide businesses that regularly ship their products in interstate commerce, and rely on standardized data and labels to provide purchasers with safety information concerning their products. The court of appeals' decision here threatens to subject them to dozens of diverse and inconsistent state and local hazard communication requirements in addition to the obligations imposed by the federal Standard. Compliance with a multitude of state requirements could pose insuperable obstacles, and the resulting confusion could

---

[2] 29 C.F.R. § 1910.1200 (1986); Appendix to Petition ("App.") E-1.

[3] 29 U.S.C. §§ 651 *et seq.* (1982).

[4] The Third Circuit, in *United Steelworkers*, was not considering the validity of any specific state law, and thus, unlike the court of appeals here, had no occasion to address the appropriate test for preemption of state "right-to-know" requirements under the federal Standard.

actually endanger rather than enhance workplace safety. American manufacturers, faced with an increasing emphasis on workplace, environmental and product safety, coupled with tremendous international competitive pressures, must be permitted to operate under reasonably consistent regulatory standards from state to state and at the federal level. Because we believe that this Court should grant the petition and clarify the scope of preemption under the Occupational Safety and Health Act, we submit this brief *amici curiae.*

REASONS FOR GRANTING THE WRIT

THE COURT OF APPEALS HAS UNDERMINED THE CAREFULLY BALANCED PREEMPTION SCHEME OF THE OSH ACT, AND DESTROYED THE UNIFORMITY OF HAZARD COMMUNICATION REGULATION, BY ENCOURAGING DUPLICATIVE AND BURDENSOME STATE "RIGHT-TO-KNOW" LEGISLATION

Review of the court of appeals' decision is necessary to prevent federal supremacy from being undermined in an important area of federal regulation. Congress, in the OSH Act, has created a carefully crafted preemption scheme. By its overly deferential preemption analysis, the Third Circuit has issued an open invitation to the states to circumvent the stringent conditions of the OSH Act through artful draftsmanship. In so doing, the court of appeals has ignored the preemption test set forth by Congress and OSHA. It has paid no more than perfunctory attention to the OSH Act, and no attention at all to OSHA's explanation of the preemptive effect of the Hazard Communication Standard. Instead, it has striven to find any excuse for upholding the provisions of the Pennsylvania Worker and Community Right-to-Know Act [5]

---

[5] Pa. Stat. Ann. tit. 35, §§ 7301 *et seq.* (Purdon Supp. 1986); App. F-1.

even in the manufacturing sector where the federal Standard is controlling.[6]

Amici concur in petitioners' reasons for requesting this Court's review. We demonstrate that the court of appeals' unprecedented departure from the scheme of the OSH Act disregards Congressional and agency intent, and will have a serious impact on nationwide industries in light of the widespread and growing number of state "right-to-know" laws. We further show that a broad preemption test would be consistent with the scheme of the OSH Act, and would mitigate the harms inflicted by multiple state laws while affording states the opportunity to protect their legitimate interests.

A. The Court of Appeals' Decision Conflicts With the OSH Act and the OSHA Hazard Communication Standard

1. *Congress established a preemption scheme in the OSH Act designed to accommodate legitimate state regulatory interests while giving OSHA responsibility for preventing burdens on interstate commerce*

The OSH Act empowers OSHA[7] to promulgate by rule nationwide occupational safety and health standards.[8] Section 18 of the Act is an express statement of Congress's intent to preempt state regulatory authority over

---

[6] OSHA has initiated a rulemaking proceeding, pursuant to the Third Circuit's mandate in *United Steelworkers*, 763 F.2d at 738, to extend the Standard to the non-manufacturing sector generally. Hazard Communication: Advance Notice of Proposed Rulemaking, 50 Fed. Reg. 48,794 (1985).

[7] The authority that the Act confers on the Secretary of Labor has been delegated to the Assistant Secretary for Occupational Safety and Health. 29 C.F.R. §§ 1902.1(a), 1910.4(a) (1986).

[8] Section 6(a), 29 U.S.C. § 655(a) (1982); App. D-1.

issues as to which OSHA has promulgated standards.[9] Once OSHA has addressed an occupational safety and health issue in a standard, states may regulate matters related to that issue only if they obtain OSHA approval of their regulations as part of a "state plan":

> Any State which, at any time, desires to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety and health issue with respect to which a Federal standard has been promulgated under section 655 of this title shall submit a State plan for the development of such standards and their enforcement.[10]

State plans must be approved by OSHA if the criteria of Section 18(c)[11] are met. These criteria reflect Congress's concern both that federal standards not be diluted, and that disparate state regulation not impair interstate commerce. Section 18(c) provides that state standards will be approved only where they are "at least as effective in providing safe and healthful employment and places of employment" as the pertinent OSHA standard, and, when applicable to products distributed or used in interstate commerce, such standards are "required by compelling local conditions" and do not "unduly burden interstate commerce."[12] Other provisions of Section 18 establish that Congress also intended OSHA to maintain significant procedural oversight over state regulatory activity after approval of a state's plan.[13]

---

[9] 29 U.S.C. § 667 (1985); Petition 1-3. Section 18(a) preserves state jurisdiction over occupational safety and health issues "with respect to which no standard is in effect under section 655 of this title." 29 U.S.C. § 667(a); Petition 1.

[10] Section 18(b), 29 U.S.C. § 667(b) (1982); Petition 2.

[11] 29 U.S.C. § 667(c) (1982); Petition 2-3.

[12] Section 18(c)(2), 29 U.S.C. § 667(c)(2) (1982); Petition 2.

[13] Section 18(c)(4), (5), (7), (8), 29 U.S.C. § 667(c)(4), (5), (7), (8); Petition 3 (required state assurances and reporting re-

Congress, in the OSH Act, clearly wished to avoid the potentially devastating effects of multiple state regulation on products distributed or used in interstate commerce. The cumulative impact of variations in state regulatory schemes is especially severe for businesses that ship products to purchasers in every state and, as a matter of economic necessity, must rely on standardized safety protections. To mitigate this burden, as noted above, Congress expressly required OSHA to decide whether a state could show that "compelling local conditions" were present and to evaluate the burden on commerce, rather than authorizing the states to regulate concurrently with OSHA. Senator Saxbe, who proposed the amendment to the OSH Act incorporating these tests, explained that multiple safety regulation on equipment moving between states would "place a tremendous burden on interstate commerce." [14] Likewise, Congressman Railsback stated that such a requirement was necessary to "protect a . . . manufacturer of products moving in interstate commerce from having to custom-build a product to meet the various requirements of the several States in the absence of unusual conditions." [15]

In promulgating the Hazard Communication Standard, OSHA carried out the intent of Congress by establishing beyond doubt that the Standard would preempt similar state and local "right-to-know" legislation. The Standard expressly provides that states may only continue to regulate in the area covered by federal regulation pursuant to an approved state plan:

> This occupational safety and health standard is intended to address comprehensively the issue of evalu-

---

quirements); Section 18(e), 29 U.S.C. § 667(e) (1982) (OSHA retention of jurisdiction); Section 18(f), 29 U.S.C. § 667(f) (continuing evaluation of state plans).

[14] 116 Cong. Rec. 37,622 (1970) (statement of Sen. Saxbe).

[15] 116 Cong. Rec. 38,703 (1970) (statement of Rep. Railsback).

> ating and communicating chemical hazards to employees in the manufacturing sector, and to preempt any state law pertaining to this subject. Any state which desires to assume responsibility in this area may only do so under the provisions of section 18 of the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*) which deals with state jurisdiction and state plans.[16]

In the preamble to the Standard,[17] one of the reasons that OSHA identified as supporting preemption was the "recent proliferation of state and local right-to-know laws," given that "[m]ost companies in the manufacturing sector have business dealings which involve interstate commerce, and are thus potentially subject to numerous different and potentially conflicting regulations." [18] Industry representatives, as OSHA acknowledged, had observed that the "potential for conflicting or cumulatively burdensome State and local laws" was "immense." [19] Summarizing the regulatory burden of the Standard, OSHA observed that the coverage and requirements of then-existing state and local "right-to-know" law were "consistent only in their inconsistency," and that the "consequent cost and ineffectiveness of this decentralized effort has been well documented." [20] Finally, OSHA explained that the express preemption provision of the Standard would "serve to reduce the burden on

---

[16] 29 C.F.R. § 1910.1200(a)(2); App. E-1.

[17] A regulatory preamble demonstrates agency intent, *Hillsborough County, Florida v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, ——, 105 S.Ct. 2371, 2377 (1985); *Fidelity Federal Savings and Loan Ass'n v. De La Cuesta*, 458 U.S. 141, 158 (1982), even though it does not, of course, have the same binding legal force as the regulation to which it relates. *Chrysler Corp. v. Brown*, 441 U.S. 281, 315-16 (1979).

[18] 48 Fed. Reg. 53,283 (1983).

[19] *Id.* at 53,284.

[20] *Id.* at 53,324.

interstate commerce produced by conflicting state and local regulations" and "ensure that all employees in the manufacturing sector are accorded the same degree of protection." [21]

2.. The court of appeals' "any other purpose" test subverts the OSH Act scheme by making it unnecessary for states to seek OSHA state plan approval in order to avert preemption of their own "right-to-know" legislation

Federal legislation displaces all state enactments where Congress's intent to preempt is "explicitly stated in the statute's language or implicitly contained in its structure and purpose," even absent any conflict. *Jones v. Rath Packing Co.*, 430 U.S. 519, 525-26 (1977). The expressed intent of Congress must always be given effect, *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 842-43 (1984), and indeed is the "ultimate touchstone" of preemption analysis. *Retail Clerks International Ass'n v. Schermerhorn*, 375 U.S. 96, 103 (1963). It is the duty of the courts to interpret a statute in the manner "most harmonious with its scheme and with the general purposes that Congress manifested." *Commissioner v. Engle*, 464 U.S. 206, 217 (1984), *quoting NLRB v. Lion Oil Co.*, 352 U.S. 282, 297 (1957) (Frankfurter, J., concurring in part and dissenting in part).

Furthermore, it is well settled that federal regulations representing a reasonable accommodation of matters committed to the agency's care are entitled to judicial deference where there is no conflict with the governing statute. *Chevron U.S.A., Inc.*, 467 U.S. at 843-44; *Fidelity Federal Savings & Loan Ass'n v. De La Cuesta*, 458 U.S. 141, 153-54 (1982); *Blum v. Bacon*, 457 U.S. 132, 141 (1982). Indeed, such regulations have no less preemptive effect than their underlying statutes. *Louisiana Public Service Commission v. FCC*, 106 S.Ct. 1890, 1898

---

[21] *Id.* at 53,334.

(1986); *Hillsborough County, Florida v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, ——, 105 S.Ct. 2371, 2375 (1985); *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 699 (1984); *Fidelity Federal*, 458 U.S. at 153.[22]

The court of appeals' cavalier disregard of the OSH Act scheme and of the intent of OSHA here is astonishing. The court, after a passing reference to the statutory preemption test, and while purporting to determine the "primary purpose" of the Pennsylvania legislation, actually upheld every provision of the state law for which it could find *any* other purpose in addition to communication of chemical hazards to employees. The consequences of this analysis are apparent from a brief review of the state and federal regulatory approaches.

The Pennsylvania Right-to-Know Act relies on the same essential elements as the federal Standard to communicate information about workplace chemical hazards. First, both federal and state law provide for determination of which chemicals are hazardous; next, manufacturers and employers generally are obligated to place identifying labels on containers of hazardous chemicals, and to obtain or prepare material safety data sheets ("MSDSs") containing a variety of data relevant to safe handling of the substance, while employers are also required to provide education and training to employees. The principal differences between the two regulatory systems are that: (1) under the Pennsylvania Right-to-Know Act, state authorities, rather than manufacturers and employers (guided by the Standard and the manda-

---

[22] Recently, in *Ohio Manufacturers Ass'n v. City of Akron*, 801 F.2d 824 (6th Cir. 1986), the United States Court of Appeals for the Sixth Circuit applied these fundamental principles in holding an Ohio municipal "right-to-know" ordinance preempted by the Hazard Communication Standard to the same extent as legislation enacted by the states themselves.

tory hazard listings to which it refers),[23] determine which chemicals are hazardous, with all employers being required to file surveys on the hazardous chemicals in their workplaces;[24] (2) the Pennsylvania Right-to-Know Act requires workplace chemicals that could pose a hazard if released into the environment to be specially identified and reported in surveys;[25] and (3) the Pennsylvania Right-to-Know Act requires hazardous substance information to be provided on request to citizens and police, fire and emergency response agencies.[26] But even the comparable general requirements of the Pennsylvania statute and the federal Standard differ in their detailed provisions; in several instances, Pennsylvania mandates specific information on labels and MSDSs that the federal Standard does not.[27] Therefore, an MSDS or label

---

[23] *See* 29 C.F.R. § 1910.1200(d)(3), (4); App. E-10.

[24] Pa. Stat. Ann. tit. 35, § 7303(a), (e); App. F-6 to 8.

[25] Pa. Stat. Ann. tit. 35, § 7303(d), (g); App. F-8 to 10.

[26] Pa. Stat. Ann. tit. 35, § 7303 (e), (f); App. F-8 to 9. The Pennsylvania statute is, unlike the federal Standard, also applicable to non-manufacturing employers. The petition for certiorari does not question the validity of the Right-to-Know Act with respect to non-manufacturing employers, although petitioners did raise this issue below.

[27] For example, Pennsylvania labels and MSDSs must include not only the identity of all hazardous ingredients constituting 1% or more of a mixture, as under the federal Standard, but also all ingredients constituting 3% or more of a mixture, for MSDSs, and 5% or more for labels, whether hazardous or not. Pa. Stat. Ann. tit. 35, §§ 7304(c)(2), 7306(a)(4); App. F-12, F-18 to 19. Full compositional labeling of this kind effectively eliminates the very foundation of OSHA's standard—that labels and MSDSs be used to communicate a warning based on a hazard assessment—and fails to direct the attention of employees, physicians and others to the chemicals which actually contribute to the hazards of the mixture. Thus, Pennsylvania's requirement is really a form of miscommunication that could lead to considerable confusion.

that would satisfy the federal Standard for a product sold generally in interstate commerce would not—without significant alterations—satisfy the Right-to-Know Act requirements when that same product is shipped into Pennsylvania.

In short, the Pennsylvania Right-to-Know Act is a statute largely concerning regulation of workplace hazard communication—duplicating and varying in specific details from the federal Standard—and interwoven with certain provisions purportedly aimed at community protection. In determining the extent to which the Pennsylvania statute would be preempted, the court of appeals gave maximum deference, not to Congress or OSHA, but to the state. It made no attempt to distinguish between those chemicals that could pose a danger if released into the environment and those chemicals whose dangers are confined to the workplace, as had the district court, *Manufacturers Association of Tri-County v. Knepper*, 623 F.Supp. 1066, 1072-73 (M.D. Pa. 1985); App. C-11 to 13, but upheld the listing and survey requirements for all hazardous chemicals, based on no more than the apparent breadth of the Pennsylvania list and the statutory duty to provide the survey information to non-employees if requested. *Manufacturers Association of Tri-County v. Knepper*, 801 F.2d 130, 137-38 (3d Cir. 1986); App. A-15 to 18. Nor, in assessing the state MSDS and labeling requirements, did it seek to distinguish between the manufacturing sector to which the OSHA standard applies and non-manufacturing employers, as had the district court, 623 F.Supp. at 1073-74; App. C-13 to 16. Instead, it upheld all of these requirements as well, offering merely the excuse that the information would be useful in completing the required surveys. It preempted only those few provisions of the Right-to-Know Act that could not be found to have any purpose whatsoever apart from employee hazard notification. 801 F.2d at 138-41; App. A-18 to 25.

The container labeling and MSDS requirements of the federal Standard are the heart of hazard communication regulation. Manufacturers and suppliers of chemicals go to considerable expense to provide to their purchasers the detailed information required. Here, the court of appeals has enabled each of the fifty states to require a separate label and MSDS for each of the thousands of hazardous chemicals shipped in interstate commerce. All that a state need do for such requirements to survive express preemption, under the court of appeals' test, is to mandate that copies of the labels and MSDSs be made available to state officials, curious citizens or the fire department. A state legislature will, of course, always be able to devise some public safety purpose for "right-to-know" laws. As a result, OSHA's Congressionally conferred responsibility to determine whether state regulation of hazard communication unduly burdens interstate commerce and is required by compelling local conditions will in practice be cancelled, since states will have considerably less reason to seek federal approval for their "right-to-know" regulations by participating in the state plan process. By upholding the Pennsylvania Right-to-Know Act where any conceivable state purpose apart from employee protection, however minimal, could be discerned, the court effectively nullified the preemption scheme of the OSH Act.

B. The Growing Number of State "Right-to-Know" Laws for Which OSHA Approval Has Not Been Obtained Demonstrates the Importance of This Issue

At the time OSHA promulgated the federal Hazard Communication Standard in 1983, the agency was already aware that multiple state regulation of hazardous chemicals in the workplace was a serious problem:

> Approximately twelve states and six local governments have some type of regulation related to the identification of hazardous substances. About thirteen other states and three other local governments have

> introduced proposed legislation either in this legislative session or in previous sessions. They cover different lists of substances, have different reporting requirements, serve different purposes, have different labeling and material safety data sheet requirements, and have different educational and training requirements.[28]

Since then, the problem has only worsened. At least thirty-three states have now adopted some form of "right-to-know" legislation or regulations with differing requirements or a broader scope than the federal Standard;[29] nineteen of these states have not obtained OSHA state plan approval for their regulation of private employers,[30] while OSHA has yet to approve or reject the statutes or regulations now in force in the remaining jurisdictions that are participating in the state plan process.[31] By comparison, ten states and territories with approved state plans have now adopted the OSHA Standard by reference or substantially identical regulations,[32]

---

[28] 48 Fed. Reg. at 53,284.

[29] *See* Appendix.

[30] These states are Alabama, Connecticut, Delaware, Florida, Illinois, Louisiana, Maine, Massachusetts, Missouri, Montana, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, Rhode Island, Texas, West Virginia, and Wisconsin. Oklahoma has right-to-know regulations applicable to public employers. A number of local governments in California, Connecticut, Florida, North Carolina, Ohio and Pennsylvania also have their own "right-to-know" ordinances.

[31] Alaska, California, Hawaii, Iowa, Maryland, Michigan, Minnesota, North Carolina, Oregon, Tennessee, Vermont, Washington and Wyoming are state-plan jurisdictions. 29 C.F.R. Part 1952 (1986). Their laws or regulations might be subject to preemption were they to be enforced subsequent to disapproval by OSHA. Connecticut and New York have only obtained state plan approval for public employees. 29 C.F.R. Part 1956, subparts E, F (1986).

[32] Arizona, Indiana, Kentucky, Nevada, New Mexico, Puerto Rico, South Carolina, Utah, Virginia, and the Virgin Islands. All

and a further ten jurisdictions have no hazard communication regulations of their own.[33]

Many of these state laws have their own specific tests for determining the hazardous chemicals regulated, not necessarily parallel to the federal Standard in their coverage, and require employers to identify hazardous chemicals in their workplaces according to lists issued by state agencies.[34] Several also impose specific container labeling requirements for substances shipped into the state, rather than merely requiring employers to preserve any existing labels.[35] Most require manufacturers to provide some form of MSDSs or equivalent data for hazardous substances shipped to purchasers in the state.[36] Finally, state "right-to-know" legislation typically contains some community protection provisions, ranging from elaborate procedures for emergency preparedness to, more commonly, a simple requirement that MSDSs and chemical surveys or lists for the workplace be made available to interested citizens or fire departments.[37]

---

of these state-plan jurisdictions have now received OSHA approval of their regulations, except for Kentucky, on which OSHA has yet to act. 29 C.F.R. Part 1952.

[33] Arkansas, Colorado, District of Columbia, Georgia, Idaho, Kansas, Mississippi, Nebraska, Ohio (at the state level), and South Dakota.

[34] *See, e.g.*, Alabama, Florida, Illinois, Maine, New Hampshire, New Jersey, Pennsylvania, and West Virginia.

[35] *See, e.g.*, Massachusetts, New Jersey, and Pennsylvania.

[36] While some of these states expressly provide that MSDSs prepared in accordance with the federal Standard also satisfy state law, a substantial number do not, including, e.g., Alabama, Florida, New Hampshire, New York, Pennsylvania, and Vermont.

[37] Many states that are not participating in the state plan process have included such provisions in their workplace "right-to-know" statutes. *See, e.g.*, Alabama, Florida, Illinois, Maine, Massachusetts, Montana, New Hampshire, New Jersey, Pennsylvania, and Rhode Island. By comparison, some state plan states also have pure com-

Due to this proliferation of state laws, manufacturers and suppliers selling chemicals on a nationwide basis must familiarize themselves and attempt to comply with the complex regulatory schemes of a score of jurisdictions lacking any approved state plans. When the differences between hazard communication requirements are thus multiplied, compliance—with MSDS and labeling provisions in particular—becomes difficult if not impossible, and the safety of workers is put at risk by confusing variations. This additional and costly burden is needless. The Hazard Communication Standard already offers comprehensive protection in the manufacturing sector. It is not for the states to second-guess the wisdom or adequacy of Congress's and OSHA's approach—yet that is just what many states and local governments are seeking to do.

Thus, a decision by this Court will aid in resolving the validity, not merely of a single state's legislation, but of the entire field of "right-to-know" enactments nationwide. *Amici* do not contend that all existing state statutes in this area must be preempted. But because these statutes rely, in general, on the same regulatory approach and contain similar provisions, what this Court determines with respect to the Pennsylvania statute will be of immense value to the lower courts in assessing the extent to which the numerous other state laws are preempted as well. Already the Third Circuit's treatment of the Pennsylvania and New Jersey "right-to-know" statutes has led to confused results. In *New Jersey Chamber of Commerce v. Hughey*, 774 F.2d 587 (3d Cir. 1985), the court of appeals found the substance survey requirements of the New Jersey Worker and Community

---

munity "right-to-know" statutes, separate from their workplace regulations, that do not affect employees, *see, e.g.*, North Carolina, Vermont. Such laws, *amici* believe, present a less substantial preemption issue.

Right to Know Act,[38] which the district court here considered "substantially identical" to those of the Pennsylvania law, to be preempted.[39] The only apparent difference between the two statutes was of form rather than substance—the Pennsylvania law, as the district court put it, does not provide specifically for a "*workplace* hazardous substance list."[40] Should this Court defer action, such confusion, like the "right-to-know" statutes, will only multiply.

C. The Plain Language of the OSH Act and Decisions of this Court Demand a Broad Preemption Test to Counter the Proliferation of State Hazard Communication Regulation

Amici submit that the federal Hazard Communication Standard is intended to have a broad preemptive effect, based upon the statutory requirement in Section 18(b) that any state standards "relating to" the subject matter of a federal regulation are precluded. This Court has given a similar "relating to" preemption test in the ERISA statute[41] a broad construction, unanimously ruling that a state law "relates to" an employee benefit plan "in the normal sense of the phrase, if it has a connection with or reference to such a plan," *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96-97 (1983), and recognizing, in *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 524 (1981), that the purposes of the state law need not be considered under such a "relating to" test in determining whether preemption is required. Here, the court of appeals turned this Court's understanding of the "relating to" test on its head. Instead of preempting any

---

[38] N.J. Stat. Ann. §§ 34:5A-1 *et seq.* (West 1986).

[39] 623 F. Supp. at 1072; App. C-11.

[40] *Id.*

[41] Section 514(a), 29 U.S.C. § 1144(a) (1982). The Employee Retirement Income Security Act of 1974 is codified at 29 U.S.C. §§ 1001 *et seq.* (1982).

state requirements that have some connection to worker protection—as the container labeling and MSDS provisions clearly do—it refused to preempt them on the ground that they were connected to some state purpose in addition to worker protection.

Properly applied, a "relating to" test would surely preempt the most onerous of the state "right-to-know" requirements—those concerning separate container labeling and MSDSs, which are plainly destructive of uniform hazard communication regulation and extremely burdensome to manufacturers. States could still carry out their legitimate role in policing non-workplace hazards, but not in a manner that disrupts the uniformity of the federal scheme. Broad preemption of dual workplace-community statutes such as Pennsylvania's is necessary to ensure that the state legislature does not use non-workplace provisions as a mere front for its workplace regulation.

This Court, in the implied preemption context, has rightly recognized that deferring to the alleged purposes of the state legislatures would enable the states to "nullify nearly all unwanted federal legislation." *Perez v. Campbell*, 402 U.S. 637, 651-52 (1971). Where Congress has mandated a broad test for express preemption, which focuses attention on the relationship of the state enactment to the federal rather than to the state purpose, the same result should obtain.[42] Congress has em-

---

[42] *Pacific Gas & Electric Co. v. State Energy Resources Conservation and Development Commission*, 461 U.S. 190 (1983), does not govern here owing to the significant difference between the statutory schemes at issue. In *Pacific Gas & Electric*, the Court found it appropriate to take state purposes into account where Congress had provided for a dual regulatory system, with federal authority over nuclear safety questions and continued state regulation of economic matters. The narrowness of federal preemption in that area was made evident in *Silkwood v. Kerr-McGee*, 464 U.S. 239 (1984), where this Court allowed a nuclear plant worker to maintain a tort action under state law for conduct related to radiation hazards. Here, by contrast, Congress has provided for uniform

powered OSHA to preempt state regulation here, and OSHA has exercised that authority; moreover, Congress has made OSHA the arbiter of whether state regulation may properly be substituted for the federal standard. In such circumstances there can be no "divided authority over interstate commerce." *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 580 (1981), *quoting Missouri Pacific Railroad Co. v. Stroud*, 267 U.S. 404, 408 (1925).

CONCLUSION

For the foregoing reasons, *amici* request that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Third Circuit in this case.

Respectfully submitted,

Of Counsel
DAVID F. ZOLL
STEPHANIE SIEGEL
CHEMICAL MANUFACTURERS ASSOCIATION
2501 M Street, N.W.
Washington, D.C. 20037
(202) 887-1100

DANIEL MARCUS
Counsel of Record
CARL WILLNER
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037-1420
(202) 663-6000
Counsel for Amicus Curiae Chemical Manufacturers Association

BRUCE H. HAMILL
JAMES ANDREW DOYLE
Office of the General Counsel
NATIONAL PAINT AND COATINGS ASSOCIATION
Washington, D.C. 20005
(202) 462-6272

JEROME H. HECKMAN
JOHN S. ELDRED
PETER A. SUSSER
KELLER & HECKMAN
1150 17th Street, N.W.
Suite 1000
Washington, D.C. 20036
(202) 956-5600
Counsel for Amicus Curiae Society of the Plastics Industry, Inc.

---

federal regulation of hazard communication, while giving states a specific opportunity to substitute their own regulation by obtaining OSHA approval.

TIMOTHY J. WATERS
JEANE A. CARPENTER
MCDERMOTT, WILL & EMERY
1850 K Street, N.W.
Washington, D.C. 20006
(202) 778-8000

Counsel for Amicus Curiae National Paint and Coatings Association

JAN S. AMUNDSON
General Counsel
QUENTIN RIEGEL
Assistant General Counsel
NATIONAL ASSOCIATION OF MANUFACTURERS
1331 Pennsylvania Ave., N.W.
Suite 1500-North Lobby
Washington, D.C. 20004
(202) 637-3000

Counsel for Amicus Curiae National Association of Manufacturers

ARTHUR L. HEROLD
WEBSTER, CHAMBERLAIN & BEAN
1747 Pennsylvania Ave., N.W.
Suite 1000
Washington, D.C. 20006
(202) 785-9500

Counsel for Amicus Curiae Society of American Wood Preservers, Inc.

STEPHEN F. OWEN, JR.
LOOMIS, OWEN, FELLMAN & HOWE
2020 K Street, N.W.
Washington, D.C. 20006
(202) 296-5680

Counsel for Amicus Curiae National Association of Printing Ink Manufacturers

STEPHEN S. KELLNER
GEORGE G. MISKO
CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION
1001 Connecticut Ave, N.W.
Suite 1120
Washington, D.C. 20036
(202) 872-8110

Counsel for Amicus Curiae Chemical Specialties Manufacturers Association

February 4, 1987

APPENDIX

APPENDIX

The following states (including both participants and non-participants in the state plan process) have enacted "right-to-know" legislation or adopted regulations with differing requirements or a broader scope than the federal standard.

Alabama. Ala. Code §§ 22-33-1 *et seq.* (1986).

Alaska. Alaska Stat. §§ 18.60.030, 18.60.065-.068, 18.60.105, 18.70.310, 29.35.500-.590 (1986); Alaska Admin. Code tit. 8, § 61.010 (Oct. 1985), incorporating § 15.0101, Hazard Communication Code (not printed in code).

California. Cal. Health & Safety Code §§ 25500 *et seq.* (West 1986) and Cal. Lab. Code §§ 6360 *et seq.* (West 1986); Cal. Admin. Code tit. 8, § 5194 (1985).

Connecticut. Conn. Gen. Stat. Ann. §§ 31-40a *et seq.* (West 1986).

Delaware. Del. Code Ann. tit. 16, §§ 2401 *et seq.* (1984).

Florida. Fla. Stat. Ann. §§ 442.101 *et seq.* (West 1986); Fla. Admin. Code Ann. §§ 38F-41.01 *et seq.* (Supp. 1985).

Hawaii. Hawaii Admin. Rules §§ 12-203-1 *et seq.* (effective June 16, 1984) (not codified).

Illinois. Ill. Ann. Stat. ch. 48, ¶¶ 1401 *et seq.* (Smith-Hurd 1986) and Ill. Ann. Stat. ch. 48, ¶¶ 2501 *et seq.* (Smith Hurd 1986); Ill. Admin. Code tit. 56, §§ 205.20 *et seq.* (1985).

Iowa. Iowa Code Ann. §§ 455D.1 *et seq.* (West 1986); Iowa Admin. Code §§ 347.110.1 *et seq.* (1986).

Louisiana. La. Rev. Stat. Ann. §§ 1150.61 *et seq.* (West 1986); Department of Public Safety and Correction Part V, Right to Know (May 20, 1986) (not printed in code).

Maine. Me. Rev. Stat. Ann. tit. 22, §§ 1696-A *et seq.* (1986) and tit. 26, §§ 1709 *et seq.* (1986); Rules Gov-

erning the Chemical Substance Identification Law (effective Sept. 10, 1985) (not codified).

Maryland. Md. Ann. Code art. 89, §§ 32A *et seq.* (1986) and Md. Health-Envtl. Code Ann. §§ 6-501 *et seq.* (1986); Md. Regs. Code tit. 9, §§ 12.33.01 *et seq.* (1986).

Massachusetts. Mass. Ann. Laws ch. 111F, §§ 1 *et seq.* (Law. Co-op. 1985); Mass. Regs. Code tit. 105, §§ 670.001 *et seq.* (1984) and tit. 441, §§ 21.01 *et seq.* (1984).

Michigan. Mich. Comp. Laws Ann. §§ 408.1005, .1011, .1014, .1031, .1063 (West 1986) (Mich. Stat. Ann. §§ 17.50(5), 17.50(11), 17.50(14), 17.50(31), 17.50(63) (Callaghan 1982 & Supp. 1986-87)).

Minnesota. Minn. Stat. Ann. §§ 145.94, 182.65 *et seq.* (West Supp. 1987); 4 Minn. R. §§ 5206.0100 *et seq.* (Supp. 1984).

Missouri. Mo. Ann. Stat. §§ 292.600 *et seq.* (Vernon 1987).

Montana. Mont. Code Ann. §§ 50-78-101 *et seq.* (1985).

New Hampshire. N.H. Rev. Stat. Ann. §§ 277-A:1 *et seq.* (1986); N.H. Code Admin. R. § He-P 1803.01 (1985).

New Jersey. N.J. Stat. Ann. §§ 34:5A-1 *et seq.* (West 1986); N.J. Admin. Code tit. 7, §§ 1G-1.1 *et seq.* (1984) and tit. 8, §§ 59-1.1 *et seq.* (1986). Certain provisions of the New Jersey statute have been preempted as a result of *New Jersey Chamber of Commerce v. Hughey*, 774 F.2d 587 (3d Cir. 1985).

New York. N.Y. Lab. Law §§ 875 *et seq.* (McKinney 1987); N.Y. Comp. Codes R. & Regs. tit. 10, §§ 72.1 *et seq.* (1982) and tit. 12, §§ 800.1 *et seq.* (1986).

North Carolina. N.C. Gen. Stat. §§ 95-173 *et seq.* (1986); N.C. Admin. Code tit. 13, § 7C.0101(a)(99) (Aug. 1986).

North Dakota. N.D. Cent. Code §§ 18-01-34 and 65-14-01 *et seq.* (1985).

Oklahoma. Oklahoma has adopted "right-to-know" regulations, pursuant to Okla. Stat. Ann. tit. 40, §§ 401 *et seq.* (West 1986), for public sector employers only. Okla. Reg. 86-212, Rules I-X (Apr. 15, 1986).

Oregon. Or. Rev. Stat. §§ 453.307 *et seq.* and §§ 654. 194.196 (1985); Or. Admin. R. §§ 437-155-001 *et seq.* (effective Nov. 25, 1985) (not printed in code).

Pennsylvania. Pa. Stat. Ann. tit. 35, §§ 7301 *et seq.* (Purdon Supp. 1986); 34 Pa. Code § 301.1 *et seq.* (1986). The Pennsylvania Department of Labor and Industry has proposed to revise its "right-to-know" regulations, 42 Pa. Bull. 4027 (Oct. 18, 1986), in light of the Third Circuit's decision.

Rhode Island. R.I. Gen. Laws §§ 28-21-1 *et seq.* (1986).

Tennessee. Tenn. Code Ann. §§ 50-3-2001 *et seq.* (1986); 4A Tenn. Comp. R. & Regs. ch. 0800-1-1, § .1200 (1986).

Texas. Tex. Rev. Civ. Stat. art. 5182b, §§ 1 *et seq.* (Vernon 1986); Tex. Admin. Code tit. 25, §§ 295.1 *et seq., reprinted in* 10 Tex. Reg. 4889 (1985) and 11 Tex. Reg. 850 (1986).

Vermont. Vt. Stat. Ann. tit. 18, §§ 1721 *et seq.* (1986); Vermont OSHA Part 1910 (amended Mar. 25, 1985) (not printed in code).

Washington. Wash. Rev. Code Ann. §§ 49.70.010 *et seq.* (West Supp. 1986-87); Wash. Admin. Code §§ 296-62-054 (Supp. 1984-85).

West Virginia. W. Va. Code §§ 16-31-1 *et seq.* (1986); and W. Va. Code §§ 21-3-18 *et seq.* (1985); Legis. R. 16-31, § 1 *et seq.* (effective July 10, 1985) and Admin. Reg. 21-3, § 1 (effective Aug. 24, 1983) (not codified).

Wisconsin. Wis. Stat. Ann. §§ 101.58 *et seq.* (West 1986); Wis. Admin. Code §§ ILHR 35 101.58 *et seq.* (Nov. 1986).

Wyoming. Wyo. G.R.R. § 27-11-105-Ch. XXI (not codified).